

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOSHUA EPPS, *individually and on behalf of all
others similarly situated,*

Plaintiffs,

-against-

PEPSICO, INC. and QUAIL MOUNTAIN COFFEE
& VENDING, d/b/a PEPSI-COLA BOTTLING,

Defendants.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 2/21/2023

7:22-cv-01389 (NSR)

ORDER

NELSON S. ROMÁN, United States District Judge

On January 12, 2023, the Court issued an Order to Show Cause (the “Order”) directing *pro se* Plaintiff Joshua Epps (“Plaintiff”) to show cause in writing on or before February 13, 2023, as to why his claims against Defendants PepsiCo Inc. and Quail Mountain Coffee & Vending (“Defendants”), should not be dismissed for want of prosecution pursuant to Federal Rule of Civil Procedure 41(b). (ECF No. 39.) The Court expressly warned Plaintiff that failure to comply with the Court’s Order would result in dismissal of this action for want of prosecution. (*Id.*) The Court’s Order was subsequently mailed to Plaintiff at the following address: Joshua Epps, 1236 Owens Street, Klamath Falls, Oregon 97601.

Federal Rule of Civil Procedure 41(b) provides: “[i]f the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it.” Fed R. Civ. P. 41(b). “Under that Rule and the inherent power of a court to dismiss for failure to prosecute, a district judge may, *sua sponte*, ... dismiss a complaint for want of prosecution.” *Taub v. Hale*, 355 F.2d 201, 202 (2d Cir. 1966); *Link v. Wabash R. Co.*, 370 U.S. 626, 630 (1962) (“The authority of a court to dismiss *sua sponte* for lack of prosecution has

generally been considered an ‘inherent power.’”).

As discussed in the Order, Plaintiff appears to be unreachable, has expressed a desire to discontinue this case, and has failed to file opposition papers in accordance with the briefing schedule established by the Court. (ECF No. 39.) Moreover, Plaintiff has now failed to respond to the Court’s Order warning him that his failure to comply with it would result in the dismissal of this action for want of prosecution. *See Pagan v. Westchester Cnty.*, 12-CV-7669, 2014 WL4953583, at *5 (S.D.N.Y. Oct. 1, 2014); *see also Mercedes v. New York D.O.C.*, 12-CV-2293, 2013 WL6153208, at *2 (S.D.N.Y. Nov. 21, 2013). As it appears that Plaintiff has abandoned this case, the Court DISMISSES this action for want of prosecution. *See Greene v. Sposato*, 16-CV-1243 (JMA) (ARL), 2019 WL 1559421, at *1–2 (E.D.N.Y. Apr. 9, 2019).

The Clerk of the Court is kindly directed to terminate this action, to mail a copy of this order to *pro se* Plaintiff at the following address: Joshua Epps, 1236 Owens Street, Klamath Falls, Oregon 97601, and to show service on the docket.

Dated: February 21, 2023
White Plains, New York

SO ORDERED:



NELSON S. ROMÁN
United States District Judge